IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JULIE MARIE a/k/a JOHN OAKLEAF,

Plaintiff,

No. 15-cv-0220 RB/SMV

v.

WARDEN FRAWNER,
and MS. IBRAHIM,

Defendants.

DEFENDANTS ANSWER TO AMENDED COMPLAINT [Doc. 14]

Defendants Warden Frawner and Ms. Ibrahim (hereinafter "Defendants"), by and through their attorneys, Keleher & McLeod, P.A., and for their Answer to the Amended Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 [Doc. 14] ("Amended Complaint") filed by Plaintiff Julie Marie a/k/a John Oakleaf ("Plaintiff") state:

A. Jurisdiction

1. Defendants admit the allegations contained in Paragraph 1 of Section A of the Amended Complaint.

2. In response to Paragraph 2 of Section A of the Amended Complaint, Defendants deny that Warden Frawner is currently employed as Warden at Otero County Prison Facility ("OCPF") and that he is a citizen of Chaparral, New Mexico. Defendants admit that Defendant Frawner was not acting under color of state law as alleged in Paragraph 2 of Section A of the Amended Complaint and affirmatively state that this allegation in the Amended Complaint warrants dismissal of Plaintiff's claims against Warden Frawner.

3. Defendants admit the allegations contained in Paragraph 3 of Section A of the Amended Complaint and affirmatively state that the allegation in the Amended Complaint that

Defendant Ibrahim was not acting under color of state law warrants dismissal of Plaintiff's claims against Defendant Ibrahim.

4. Defendants acknowledge Plaintiff's invocation of subject matter jurisdiction as alleged in Paragraph 4 of Section A of the Amended Complaint.

5. Defendants deny any other allegations that may be contained in Section A of the Amended Complaint.

B. Nature of the Case

6. In response to the allegations contained in Section B of the Amended Complaint, Defendants admit that Plaintiff is incarcerated at OCPF, that OCPF is located in Chaparral, New Mexico, and that OCPF is managed by MTC. Defendants deny the remaining allegations contained in Section B of the Amended Complaint.

C. Cause of Action

7. Defendants deny the allegations contained in Count I of Section C of the Amended Complaint, including all subparagraphs and supporting facts.

8. Defendants deny the allegations contained in Count II of Section C of the Amended Complaint, including all subparagraphs and supporting facts.

9. Defendants deny the allegations contained in Count III of Section C of the Amended Complaint, including all subparagraphs and supporting facts.

10. Defendants deny any other allegations that may be contained in Section C of the Amended Complaint.

D. Previous Lawsuits and Administrative Relief

11. In response to Paragraph 1 of Section D of the Amended Complaint, including subparagraphs a-f, Defendants admit that Plaintiff has filed a petition for habeas corpus in Otero County (D-1215-CV-2014-00124) and that matter is still pending.

12. Defendants admit, in response to Paragraph 2 of Section D of the Amended Complaint that Plaintiff has filed informal complaints with OCPF but, to the extent Paragraph 2 of Section D of the Amended Complaint can be read to infer exhaustion of administrative remedies, Defendants deny that Plaintiff has exhausted all administrative remedies.

13. Defendants deny any other allegations that may be contained in Section D of the Amended Complaint.

Request for Relief

14. Defendants acknowledge Plaintiff's request for relief but deny Plaintiff's entitlement to same.

15. Defendants deny the remaining allegations contained in Section E of the Amended Complaint, including all sub-sections.

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim against Defendants upon which relief can be granted and therefore should be dismissed with prejudice.

SECOND AFFIRMATIVE DEFENSE

Defendants acted in good faith, acted consistent with sound principles for the confinement of individuals to maintain the safety of Plaintiff and others in a complex and potentially dangerous prison population, and acted upon direction of non-parties to this action; accordingly, the claims against Defendants should be dismissed.

THIRD AFFIRMATIVE DEFENSE

The allegations of the Amended Complaint do not rise to the level to state a claim for cruel and unusual punishment in violation of the Eighth Amendment of the United States of America.

FOURTH AFFIRMATIVE DEFENSE

The Amended Complaint should be barred in whole or in part by the Prison Litigation Reform Act.

FIFTH AFFIRMATIVE DEFENSE

42 U.S.C. § 1997e(a), as amended by the Prison Litigation Reform Act, prohibits Plaintiff form bringing an action pursuant to 42 U.S.C. § 1983 until administrative remedies have been exhausted. Plaintiff has failed to plead and prove that all administrative remedies have been exhausted and, thus, has failed to satisfy jurisdictional prerequisites under federal and New Mexico state law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claimed injuries, if any, were caused by her own negligence, misconduct, or fault; therefore her claims are barred in whole or part by her own comparative fault.

SEVENTH AFFIRMATIVE DEFENSE

Discovery has not begun in this action; accordingly, Defendants reserve their right to seek to amend their Answer to plead additional affirmative defenses if warranted.

WHEREFORE, having fully answered the Amended Complaint, Defendants pray that it be dismissed with prejudice, for their costs of suit, and for other such relief that the Court deems just and proper.

Respectfully submitted,

KELEHER & MCLEOD, P.A.

By: */s/ Christina Muscarella Gooch*

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I HEREBY CERTIFY that on December 17, 2015, I filed the foregoing pleading electronically through the CM/ECF System, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Manual Notice List:

John Oakleaf
Otero County Prison Facility
10 McGregor Range Rd
Chaparral, NM 88081

/s/ Christina Muscarella Gooch
Christina Muscarella Gooch

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